

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

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PLR-146956-13

Date:

March 26, 2014

Legend

Parent =

Taxpayer =

Tax Year A =

Date A =

Date B =

Date C =

Date D =

Date E =

Date F =

Date G =

Date H =

State A =

Employee A =

Employee B =

Firm =

Dear :

This is in response to a request submitted on behalf of Taxpayer for a ruling granting an extension of time for making an election under § 831(b) of the Internal Revenue Code pursuant to § 301.9100-3 of the Procedure and Administrative Regulations, to be effective for Tax Year A.

The ruling contained in this letter is based upon information and representations submitted by Taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the ruling request, it is subject to verification on examination.

FACTS

Taxpayer represents that it was incorporated on Date A and licensed to issue property and casualty insurance contracts on Date B under the laws of State A. Taxpayer represents that it qualifies as an insurance company for federal income tax purposes making it eligible to elect to be taxed pursuant to § 831(b). The sole shareholder of Taxpayer is Parent.

Firm is an external tax advisor to Parent and to its related companies which includes Taxpayer. Employee A of Parent specialized in financial accounting which includes assisting with tax compliance. Employee A was placed in charge of overseeing the filing of a paper Form 7004 (Application for Automatic Extension of Time to File Certain Business Income Tax, Information and Other Returns) for Taxpayer's tax year ended on Date B. Employee A was not responsible for filing Form 7004 for the prior tax year. Employee A knew that Firm had electronically filed Forms 7004 for other related companies. Firm sent Taxpayer's Form 7004 and a transmittal letter dated Date C to Employee B on Date D. Employee A did not understand that the paper Form 7004 for Taxpayer that was enclosed with the letter was the Form 7004 that Taxpayer was to file on or before Date E.

Employee A became aware that Taxpayer's paper Form 7004 had not been filed timely shortly before Date F when the employee was reviewing state tax forms that were required to be filed by Date G. Taxpayer's paper Form 7004 was included in these extensions and Employee A saw the mailing instructions from Firm. Employee A believed Firm had already e-filed the Form 7004. Employee A contacted a member of the Firm to inform them that the Form 7004 had not been timely filed. Employee A was told that Taxpayer should request relief under § 301.9100 to make the § 831(b) election. Taxpayer filed its Form 1120PC on Date H for Tax Year A.

The following representations are made in connection with the request for the extension of time.

1. The request for relief was filed before the failure to make the regulatory election was discovered by the Internal Revenue Service.
2. The granting of relief by the Internal Revenue Service will not result in a lower tax liability than Taxpayer would have had if the § 831(b) election was timely made.
3. Taxpayer does not seek to alter a return position for which the accuracy related penalty has been or could have been imposed under § 6662 at the time Taxpayer requested relief, and the new position requires or permits a regulatory election for which relief is requested.
4. Taxpayer failed to file the election inadvertently. Taxpayer has not used hindsight to seek an extension of time to make the election. Taxpayer always had the intent to make the § 831(b) election. Taxpayer was advised by tax professionals regarding making the § 831(b) election and the timely filing of Form 7004.

LAW and ANALYSIS

Insurance companies other than life insurance companies are taxable under § 831. However, certain insurance companies can elect to pay an alternative tax provided in § 831(b) on only their taxable investment income. Section 831(b)(2)(A)(ii) requires that a company elect the application of the alternative tax imposed by § 831(b). Pursuant to § 301.9100-8(a)(2)(i), this election must be made by the due date (taking into account any extensions of time to file obtained by the taxpayer) for the first taxable year for which the election is effective.

Under § 301.9100-1(c), the Commissioner may grant reasonable extension of time pursuant to §§ 301.9100-2 and 301.9100-3 to make a regulatory election (but no more than 6 months except in the case when the taxpayer is abroad), under all subtitles of the Code except subtitles E, G, H and I. Section 831(b) is part of subtitle A.

Section 301.9100-3 provides that requests for extensions of time for regulatory elections that do not meet the requirements of § 301.9100-2 (automatic extension) must be made pursuant to § 301.9100-3. Under § 301.9100-3(a), relief will be granted when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the government.

Under § 301.9100-3(b)(1), a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer: (i) requests relief under this section before the failure to make the regulatory election is discovered by the Internal Revenue Service; (ii) failed to make the election because of intervening events beyond the taxpayer's control; (iii) failed to

make the election because, after exercising reasonable diligence (taking into account the taxpayer's experience and the complexity of the return or issue), the taxpayer was unaware of the necessity for the election; (iv) reasonably relied on the advice of the Internal Revenue Service; or (v) reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer and the tax professional failed to make or advise the taxpayer to make the election.

Under § 301.9100-3(b)(2), a taxpayer will not be considered to have reasonably relied on a qualified tax professional if the taxpayer knew or should have known that the professional was not competent to render advice on the regulatory election or was not aware of all relevant facts.

Under § 301.9100-3(c)(1), the interests of the government are not prejudiced if the tax liability in the aggregate for all taxable years affected by the election will not be lower by granting the relief than if the election had been timely made (taking into account the time value of money).

Based solely on the facts submitted and the representations made, we conclude that the requirements of §§ 301.9100-1 and 301.9100-3 have been satisfied. Taxpayer requested relief under these provisions before the failure to make the regulatory election was discovered by the Service, and Taxpayer reasonably relied on a qualified tax professional.

RULING

Taxpayer is granted an extension of time until 60 days following the date of this letter to make the election to be subject to the alternative tax provided in § 831(b)(2)(A) for Year A.

CAVEATS

Notwithstanding that an extension of time is granted under § 301.9100-3 to make an election under § 831(b)(2)(A), additions, penalties and interest that would otherwise be applicable, if any, continue to apply with respect to the tax return for Year.

No ruling has been requested, and no opinion is expressed (or implied) whether Taxpayer is engaged in the issuing of insurance or annuity contracts or the reinsuring of risks underwritten by insurance companies; or whether Taxpayer qualifies as an insurance company under § 831(c) for Year.

A copy of this ruling letter should be attached with Taxpayer's federal income tax return.

This ruling is directed only to the taxpayer who requested it. Section 6110 (k)(3) provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file in this office, a copy of this ruling is being furnished to your authorized representative.

Sincerely,

SHERYL B. FLUM
Branch Chief, Branch 4
Office of Associate Chief Counsel
(Financial Institutions & Products)

cc: